

**Testimony Of  
Rick Tidwell  
Of Birch Telecom, Inc.  
Before The  
United States Senate  
Committee On Commerce, Science  
And Transportation**

**November 4, 1999**

Senator Burns and members of the Committee, I am Rick Tidwell, Vice President of Regulatory and Industry Relations for Birch Telecom, Inc, a small but growing competitive local exchange carrier with principal offices in Kansas City, Missouri and Emporia, Kansas. Birch is a member of the Competitive Telecommunications Association, also known as CompTel.

Thank you for inviting me to testify before the Committee today on the state of local competition in our nation. I will focus my remarks on issues influencing the development of competition in the states where Birch currently operates – Kansas, Missouri and Texas. All three states fall within Southwestern Bell's territory.

Before I turn to the specific issues affecting the development of local telecommunications competition and the availability of consumer choice in this region of the country, it may be helpful if I provide you with a brief description of Birch.

## **About Birch**

Birch currently serves approximately 90,000 access lines. We employ 850 people, including 250 at our headquarters in Kansas City, and 250 employees in Emporia, Kansas where our customer service and call center is located.

In early 1997, Birch began operations in Kansas as a reseller of Southwestern Bell's local exchange services. Resale operations were later expanded to Missouri. In 1998 Birch began switch based operations in some Missouri markets. In 1999, Birch began service in Texas through the use of the unbundled network element platform ("UNE-P") service.

In Missouri, we operate switches in Kansas City and St. Louis. We have customers located throughout the state, including Carthage, Chillicothe, St. Joseph and Springfield. In Kansas, we have customers in every county of the state, and we have substantial operations in Dodge City, Emporia, Lawrence, Manhattan, Salina, Topeka and Wichita (where we also operate a switch). In Texas, we recently began operations in Austin, Beaumont, Corpus Christi, Dallas/Fort Worth, Houston, Lubbock, Tyler/Longview and Waco.

We offer a menu that includes local and long distance services, high-speed internet access services and customer premises equipment to residential and small and mid-sized business customers. Forty percent of our customers are residential customers.

In addition to our voice-oriented circuit switches in Kansas City, St. Louis and Wichita that route local and long distance calls, we are deploying an ATM packet switching network. Packet switches initially are being installed in Kansas City, St. Louis, Wichita and Fort Worth. These data-oriented packet switches will be linked by high-speed ATM transport facilities.

We provide our services through our own switching equipment and, pursuant to provisions of the Telecommunications Act of 1996, through use of leased network facilities and resold services obtained primarily from Southwestern Bell.

Southwestern Bell is also our principal competitor. Although it has been a struggle, and although we still are a small company, we have grown into one of the larger competitive local exchange carriers ("CLECs") in the territory served by Southwestern Bell.

That's who we are today. Tomorrow, if we continue to work harder and smarter than Southwestern Bell and our other competitors, we expect to emerge as a major regional provider of

telecommunications services to small and mid-sized businesses and residential customers. However, unless Southwestern Bell has the incentives to cooperate actively in complying fully with its duties under the 1996 Act, the development of competition and the benefits it brings to consumers will be seriously retarded.

#### **Southwestern Bell's Duties And Incentives Under The 1996 Act**

The duties and incentives of Southwestern Bell and other incumbent carriers to open their local exchange markets to competition were set by the 1996 Act, a law which several of you on the Committee were instrumental in fashioning. Overall, Birch believes the Act established a reasonable balance between the interests of incumbent local exchange carriers and competitors, such as Birch, who want to enter local markets. Most importantly, the Act recognized that incumbent carriers have strong economic motives to maintain their de facto control of essential bottleneck facilities, and that a combination of duties and incentives would be required to open the local exchange market.

Sections 251 and 252 of the Act set forth the duties of incumbents to open their markets to new entrants by mandating interconnection, access to unbundled network elements and resale on just, reasonable and nondiscriminatory terms. Access to such facilities and services is absolutely essential to CLECs such as Birch.

The incumbent Bell Companies' incentive is contained in Section 271 of the Act which allows a Bell Company into in-region long distance markets once it has opened its monopoly local markets to competition. Until recently, the Bell Companies did not appear to have been strongly incented by the prospect of offering long distance voice service. Perhaps that is because prices and profit margins for long distance voice traffic have been plummeting since the passage of the Act.

More recently, however, Bell Companies' behavior evidences somewhat stronger interest in entering the interLATA market. Birch believes that apparent stronger interest stems from the Bells' desire to enter the rapidly growing market for interLATA data services and their desire to become the complete provider of services for customers, including everything from local wireline and wireless service to broadband internet and data services.

#### **Southwestern Bell's Incentives Under Its Proposed Merger with Ameritech**

Another incentive for Southwestern Bell to open its local exchange market to competition stems from its proposed merger with Ameritech. The Federal Communications Commission ("FCC"),

in approving the transfer of control of licenses triggered by the proposed merger, imposed a variety of conditions, including conditions designed to push Southwestern Bell toward opening its local markets.

These conditions, coupled with the performance standards and remedies that Southwestern Bell has agreed to in Section 271 proceedings in Texas, are encouraging steps. They lay out a plan that leads toward the opening of Southwestern Bell's local markets. However, to implement the plan, Southwestern Bell will have to dedicate adequate resources to correct the many deficiencies in its current methods of providing CLECs interconnection, UNE and resale services. Moreover, Southwestern Bell requires a fundamental change its mindset in its dealings with CLECs such as Birch.

### **Birch's Experience To Date With Southwestern Bell**

Even with the duties and incentives the 1996 Act imposes on and offers to the Bell Companies to open their local exchange markets to competition, Birch's experience in dealing with Southwestern Bell has been frustrating. The following is a list of some of the Southwestern Bell tactics Birch has encountered.:

**Unreasonable "UNE-P" charges:** "UNE-P" allows a competitor to purchase a complete package of network elements combined to provide service to the competitor's customer. Even though Southwestern Bell has signed agreements in Texas and Missouri allowing UNE-P Birch cannot get Southwestern Bell to provide the service in Kansas without unreasonable recombination charges. Additionally in Texas, when converting existing service Birch must only pay the conversion charges. In Kansas and Missouri Southwestern Bell requires Birch to pay the non-recurring charges for new installation of the service even though all the facilities are in place and working. These charges are unnecessary and unreasonable yet, in order to do business Birch has no choice but to pay them. This is especially disconcerting in the rural areas as there is little chance that a secondary network such as a cable TV system or fiber provider will enter the smaller markets due to the limited total market size. As a result, Southwestern Bell will most likely remain the only provider of outside plant facilities for many of these markets for years to come.

**Resale Restrictions:** Southwestern Bell refuses to allow Birch to resell customer specific arrangements or contract arrangements at the standard resale discount. In fact, Southwestern Bell even refuses to allow Birch to assume the liability on those contracts and resell them to Birch's customers with no reduction in the amounts payable to Southwestern Bell. Rather, Southwestern Bell takes the position that any attempt to convert the service covered by the contract requires the customer to pay large termination fees to Southwestern Bell. The only exception to this is Texas in which Southwestern Bell was ordered to allow assumption of existing contracts.

**Inadequate Operational Support Systems:** These systems simply are inadequate and fail to provide competitors such as Birch the ability to provide their customers the same level of service as Southwestern Bell representatives are able to provide Southwestern Bell customer's using Southwestern Bell's

internal systems, as required by the statute. One of the major issues in Texas in the Southwestern Bell 271 proceeding is the issue of OSS systems and their current "state of readiness" and scalability. In September, Birch filed a complaint in Texas regarding a number of OSS issues. In subsequent meetings and conference calls Birch has found that there are many flaws in Southwestern Bell's provisioning systems. One problem in particular is that of coordination of orders. When a CLEC places an order for the conversion of a service under UNE-P, Southwestern Bell's back-office systems actually generate 3 orders, a Disconnect order, a New order, and a Change order. Not all orders are generated by the same system and the orders do not appear to be coordinated in any way. As a result, many customers converting to Birch are experiencing loss of dialtone at conversion. To make matters worse, Southwestern Bell has not provided an expedited method for restoring service and consequently customers have lost dial-tone for days at a time.

**Omitted Directory Listings:** Since 1997 Birch has from time to time found customers that had listings in the Southwestern Bell telephone directory omitted after they converted to Birch. In late 1998, Southwestern Bell admitted that a problem had been found and reported that it had been fixed. Yet omissions still occur. This issue continues to haunt CLECs. Birch first reported the problem almost two years ago, and Southwestern Bell still has not completely eliminated the problem.

**Premature Disconnection of Service:** In several cases Southwestern Bell has disconnected the customer's Southwestern Bell service before the specified time for conversion of the customer service to Birch, leaving the customer without any telephone service. This has happened to business customers. The end result is that some customers are now afraid to move their service. This continues to occur for both our UNE-P and switch based customers and is related to inadequate OSS identified above.

**Untimely and Inaccurate Billing:** Southwestern Bell ignores due dates and deadlines. Over the last year Southwestern Bell has repeatedly failed to deliver timely and accurate billing information which Birch must have in order to bill our customers. Southwestern Bell's failure to provide the billing records in the proper manner forced Birch to suspend its own billing, bringing Birch's cash flow to a halt. Yet, Southwestern Bell demands prompt payments.

There are many other examples of Southwestern Bell's deficiencies. Upon request, I will be glad to furnish the Committee a more detailed list of Birch's grievances. I will end this discussion by highlighting one of Southwestern Bell's most effective tactics for frustrating the development of competition -- under-resourcing its CLEC account teams.

#### **Inadequate CLEC Account Team Resources.**

For years, interexchange carrier account teams have been assigned a technical representative to deal with the many operational issues that arise. We understand Southwestern Bell CLEC account teams have requested this technical support and yet Southwestern Bell management has not allocated the required resources. The results are unnecessary service disruptions and delays in providing

services for companies like Birch, all of which serves to protect Southwestern Bell's monopoly market from competitive incursions.

Southwestern Bell's Local Service Center (LSC) and Local Operations Center (LOC) also are understaffed. Here is a recent example. A few weeks ago, Birch personnel had three trouble reports to work with Southwestern Bell. Three separate Birch employees called Southwestern Bell's CAST center where Birch has been instructed to call. One of the calls was answered. The other two calls rolled into a recording advising the caller to stay on the line until someone answered. The call that was answered lasted 45 minutes. During this time the other calls were left on hold. Birch escalated the problem to Southwestern Bell's LOC management. The report back to Birch indicated that only one person was available at the time of the calls. I want to emphasize that this Southwestern Bell group is not a group dedicated to Birch but is used by many CLECs. Birch has no idea how many other trouble calls went unanswered during that time.

**The Need for an "Attitude Adjustment."**

In a meeting in May 1998, the Texas Public Utility Commission was characterized as saying that Southwestern Bell needs an "attitude adjustment." At Birch we don't feel that Southwestern Bell has taken this advice to heart. It "talks the talk" but has yet to "walk the walk." Without a genuine change of attitude and a commitment of the necessary resources by Southwestern Bell, Birch and other CLECs will continue to be frustrated in their efforts to bring consumers choice in local telecommunications services in Southwestern Bell's territories.

Birch would welcome tangible evidence that Southwestern Bell has experienced such an adjustment without the need for further legislation. Absent such evidence, the types of penalties contemplated in Senator Hollings' Bill, S. 1312, may be necessary.

That concludes my testimony. Thank you for your time and attention to this important matter.